

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES R. BARNES and U.S. POSTAL SERVICE,
POST OFFICE, Memphis, Tenn.

*Docket No. 96-1548; Submitted on the Record;
Issued May 18, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant had any disability after April 27, 1988 causally related to an aggravation of his preexisting foot condition.

The case has been on appeal four times previously.¹ In a February 6, 1990 decision, the Board found that the report of Dr. George Wood, II, a Board-certified orthopedic surgeon, selected to resolve a conflict in the medical evidence, was inadequate to resolve the conflict on whether appellant's foot condition was causally related to factors of his employment as a letter carrier, because Dr. Wood did not provide a firm diagnosis of appellant's condition, did not provide a firm opinion negating the relationship between the peripheral neuropathy he suggested as a possible diagnosis and the factors of appellant's employment and did not provide sufficient rationale in support of such a conclusion. The Board remanded the case for further clarification by Dr. Wood. On remand the Office of Workers' Compensation Programs referred appellant to Dr. Owen B. Tudor, a Board-certified orthopedic surgeon, after it determined that Dr. Wood had failed to provide adequate clarification of his report. In a March 12, 1992 decision, the Board found that Dr. Tudor did not adequately address whether appellant's employment as a letter carrier aggravated his preexisting foot condition to the extent that he became unable to perform his employment duties. The Board further found that Dr. Tudor did not answer the Office's question on whether the aggravation was temporary or permanent and, if temporary, the extent and duration of such aggravation. The Board concluded that the reports of Dr. Tudor, were insufficient to resolve the conflict in the medical evidence and remanded the case for referral of appellant to a third impartial specialist. In an August 30, 1993 decision, the Board found that Dr. James G. McClure, a Board-certified orthopedic surgeon, indicated that appellant's diabetes, peripheral neuropathy and heel spurs were not causally related to factors of his employment. He concluded that appellant's complaints of foot fatigue would be caused by prolonged walking or

¹ Docket No. 94-1060 (issued November 15, 1995); Docket No. 92-1999 (issued August 30, 1993); Docket No. 91-1551 (issued March 12, 1992); Docket No. 90-49 (issued February 6, 1990). The history of the case is contained in the prior decisions and is incorporated by reference.

standing in his employment. Dr. McClure concluded that appellant probably recovered from the January 27, 1988 left foot surgery, which removed a heel spur, by April 27, 1988. The Board, however, found that Dr. McClure's report lacked rationale in support of his opinion that appellant's bilateral heel spurs were not caused by factors of appellant's employment. The Board also found that Dr. McClure did not state whether appellant's surgery was due to factors of employment or necessary to cure or give relief to a condition caused by appellant's employment. He also did not specify whether appellant would have been able to return to his former employment, as a letter carrier by April 27, 1988 and did not answer questions on whether the factors of appellant's employment aggravated a preexisting condition and whether such aggravation was temporary or permanent. The Board remanded the case for clarification by Dr. McClure. The Office subsequently accepted appellant's claim for a temporary aggravation of plantar fascitis, ceasing by April 27, 1988 and authorized appellant to claim compensation for wage loss for any periods of disability, between January 27 and April 27, 1988. In a November 15, 1995 decision, the Board found that Dr. McClure's clarification of his report was inadequate. Dr. McClure concluded that appellant's heel spur was not caused or aggravated by his employment, indicating that heel spurs occur spontaneously. The Board found, however, that Dr. McClure did not give any rationale in support of his opinion that appellant's heel spur was not aggravated by factors of his employment. Dr. McClure attributed appellant's pain to plantar fascitis, but did not indicate whether the plantar fascitis was caused or aggravated by factors of appellant's employment and whether the condition caused any disability. He also declined to address whether appellant was able to perform the duties of a letter carrier after April 27, 1988 or whether he was disabled due to an employment-related disability or aggravation of preexisting conditions. The Board therefore remanded the case for referral of appellant to a fourth impartial specialist.

The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. James T. Galyon, a Board-certified orthopedic surgeon, for an examination. In a February 26, 1996 report, Dr. Galyon diagnosed pre-hallux flat foot and diabetic neuropathy. He stated that appellant's symptoms were not currently aggravated by his activities as a letter carrier, because he had not worked as a letter carrier for many years, but still had the same complaints. Dr. Galyon added that he did not believe that appellant's condition was ever aggravated by his work activities. He commented that the diagnosis for appellant's surgery on the left foot was erroneous. Dr. Galyon noted that a bone spur was removed from appellant's left foot. He indicated that appellant also had a bone spur in the right foot that was not removed and his symptoms were essentially equal in both feet. Dr. Galyon commented that it was reasonable to conclude that appellant was disabled for three months after his surgery, because any foot that had such surgery was not likely to be suitable for protracted walking for three months. He stated, however, that appellant's diagnosis and subsequent surgery were not related to his occupation. Dr. Galyon concluded that appellant did not have any impairment or disability, which was related to his work activities either causally or by aggravation. He indicated that appellant had serious limitations of his physical abilities, which were entirely unrelated to his work but were caused by developmental and hereditary problems.

In a March 12, 1996 decision, the Office denied appellant's claim for compensation on the grounds that the evidence of record failed to demonstrate a causal relationship between the injury and the claimed condition or disability.

The Board finds that the weight of the medical evidence establishes that appellant does not have any disability after April 27, 1988 causally related to factors of his employment.

Dr. Galyon, selected as the most recent impartial specialist, indicated that appellant's foot condition was unrelated to his employment but was due to diabetic peripheral neuropathy and pre-hallux flat foot. He noted that surgery had been performed on appellant's left foot to remove a bone spur, but indicated that the surgery was not related to appellant's employment. Dr. Galyon conceded that anyone having such surgery would be unable to perform prolonged walking for approximately three months. He concluded that appellant's condition was not aggravated in any way by his employment. In situations where there exists opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.² Dr. Galyon gave a rationalized report, based on an accurate history of appellant's condition, which established that appellant's foot condition was unrelated to factors of appellant's employment either by cause or aggravation.

The decision of the Office of Workers' Compensation Programs, dated March 12, 1996, is hereby affirmed.

Dated, Washington, D.C.
May 18, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

² *James P. Roberts*, 31 ECAB 1010 (1980)